so-called '*res judicata*' requirement of Rule 24(a)(2) is a patent effort to conjure up reasons for review by this Court." (Plaintiffs' brief in opposition page 8.) This serious charge of imposing on this Court is specifically refuted by defendants-respondents, for whom it is quite clear that petitioners' case for intervention failed exactly because "Rule 24(a)(2) incorporates the doctrine of *res judicata*." (Defendants' brief in opposition page 6.)

Second. Respondents-defendants assert that the petitioner's substantive rights, resulting from the increased costs to consumers because defendants' imposition on the public utilities in violation of the anti-trust laws, is irrelevant to the petitioner's right of intervention. (Defendants' brief in opposition, page 8.) On the other hand, respondents-plaintiffs, with adequate quotation from the opinion of the Court of Appeals, point out that that court, purporting to rely on the *Keogh* decision, rejected petitioner's intervention on the ground that consumers can have no interest created by federal law in recuperating losses resulting from the depredations of the manufacturers on the utilities. (Plaintiffs' brief in opposition, page 7.)

Third. With reference to the validity of the pass-on defense, we find the respondents again in conflict. The respondents-defendants assert that petitioner cannot intervene because, to the extent that the utilities passed on the additional costs to the consumers, the utilities will not be able to recover from the defendants and, therefore, the intervenor would have no interest in any recovery by the plaintiff. (Defendants' brief in opposition, page 5.) The respondents-plaintiffs make it clear, on the other hand, that their position is that the fact that "respondents-plaintiffs will benefit from any recovery to the exclusion of the consumers who have allegedly borne the loss is irrelevant." (Plaintiffs' brief in opposition, page 7.) In short,

that there will be a fund recovered for losses passed on to consumers but consumers should not be permitted to share in the recovery.

The necessity for this Court to rule on the questions of the construction of the *Keogh* case, of the requirement of *res judicata* in Rule 24, and of the validity of the "pass-on" defense, it is submitted, have been made abundantly clear by the two briefs in opposition when they are read in conjunction. Equally clear is the fact that the consumers interest will receive no protection from either of the parties, or from anybody else, unless the State is permitted to intervene.

The petition for certiorari should be granted.

Respectfully submitted,

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